IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.39343 of 2008
ANIL KUMAR YADAV @ ANIL YADAV
Versus
STATE OF BIHAR
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2. 17.10.2008 Heard Kumari Amrita, learned counsel for the petitioner and Mr. D. Mehta, learned A.P.P.

The case is under section 307 etc. of the Indian Penal Code and the petitioner is in custody since 19.4.2004. Learned Judge, who dismissed the prayer of the petitioner on 21.6.2007, has noted that inspite of framing of charge only one witness has been examined by the prosecution. Learned Judge has not indicated as to when charge was framed and whey witnesses are not being produced and further as to what steps the court has taken for procuring the attendance of the witnesses. It may not be out of place to mention that provision of section 309 of the Code of Criminal Procedure contains a clause for imposing cost for seeking unnecessary adjournment. It is not that the cost could be imposed against the accused only, the State could also be saddled with appropriate cost, if it shows dilly-dallying tendency in production of witnesses. If the court could not avoid imposing cost against the State, it might be recovered from the fees of the Addl. Public Prosecutor in case of failure in producing witnesses. I believe that the court could not be acting illegally. There could not be any other method or course for the production of witnesses. Likewise if the court finds that the witnesses are not coming inspite of adjournment for a longer period as regards attendance

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of witnesses, it must shut down the evidence. The court is not the prosecutor neither it is the persecutor, it has to deliver justice fairly and quickly.

I dismiss the petition in the expectation that the trial should be concluded within six months' time from the date of receipt/production of a copy of the present order. I believe that the learned Judge shall read the present order carefully and act in accordance with the observation made herein besides acting in the light of the decision in the case of Shailendra Kumar Vrs. State of Bihar reported in A.I.R. 2002 SC 270.

(Dharnidhar Jha,J)

sudip

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